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DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

PUGET SOUNDKEEPER ALLIANCE;

Petitioner,

v.

DEPARTMENT OF ECOLOGY,

Respondent,

No.

NOTICE OF APPEAL

1. Identity of appealing parties and representative.

The appealing party is

Columbia Riverkeeper
724 Oak St.
Hood River, OR 97301
(541) 387 - 3030

The representatives of the appealing party are

Richard A. Smith
Brian Knusten
Smith & Lowney, PLLC
2317 East John Street
Seattle, WA 98112
(206) 860-2883
fax (206) 860-4187

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Initial: MC 9/23/09

NOTICE OF APPEAL - 1

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

1 2. Identification of other parties.

2 The respondent in this appeal is the Washington State Department of Ecology.

3 3. The decision under appeal.

4 This is an appeal of the "Industrial Stormwater General Permit," a National Pollutant
5 Discharge Elimination System and State Waste Discharge General Permit, issued on October 21,
6 2009. A copy of this permit is attached.

7 4. Short and plain statement showing grounds for appeal.

8 Appellant considers the Industrial Stormwater General Permit to be unlawful and unfair
9 because it does not meet the requirements or intent of the federal Clean Water Act, applicable
10 regulations promulgated by the Environmental Protection Agency, Washington State water
11 pollution control law, and Ecology's regulations. In violation of these various laws and
12 regulations, the Industrial Stormwater General Permit fails to ensure compliance with water
13 quality standards or establish numeric effluent limitations. The Permit also fails to require
14 implementation of AKART and includes unclear, unlawful, inconsistent, and unfair monitoring,
15 application, and reporting requirements, that in some cases fail to satisfy applicable regulatory
16 requirements. The Permit also includes unlawful and unfair provisions for effective modification
17 of permit terms without adherence to permit modification procedures.

18 5. Statement of facts.

19 The Industrial Stormwater General Permit authorizes discharges of process wastewater
20 and stormwater from approximately 1,000 industrial facilities around Washington State.
21 Monitoring data collected by Ecology indicates that stormwater discharges from industrial

1 facilities typically contain elevated levels of pollutants, making this permit one of great
2 significance to the protection of Washington's water resources.

3 Various conditions of the Permit allow for significant changes in permit conditions or
4 coverage, labeled modification, waiver or no exposure exemption among others, by automatic
5 operation rather than following determination of Ecology when such determination is required by
6 applicable law.

7
8 Monitoring requirements of the Permit fail to ensure that monitoring for permit
9 compliance and other purposes, including triggering adaptive management responses, satisfies
10 the requirements of applicable law, including those mandating that monitoring be representative
11 of the discharge monitored. These include but are not limited to monitoring provisions regarding
12 sampling requirements, especially the timing for sample collection, selection of discharges and
13 pollutant parameters for sampling and analysis, inspections, and relief from monitoring
14 requirements for "consistent attainment."

15
16
17 Benchmarks established in the Permit are the numeric components of narrative water
18 quality-based effluent limitations. As such, the benchmarks are inconsistent with applicable law
19 because they are not consistent with and derived from water quality standards. Such deficiencies
20 include but are not limited to the use of dilution factors in the derivation of the copper
21 benchmarks in a manner contrary to the ruling of the Pollution Control Hearings Board in the
22 appeal of the 2005 Boatyard General Permit. Benchmarks in the Permit are inconsistent with
23 applicable law in other respects as well. These include violation of applicable law, including but
24 not limited to the antibacksliding provision, in the removal of the BOD benchmark for discharges
25 from timber and paper products industries.

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28 NOTICE OF APPEAL - 3

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1 In developing the Permit, Ecology violated applicable law by failing to perform
2 reasonable potential analysis and to make other determinations that are required. As a result, the
3 Permit fails to include numeric water quality-based effluent limitations as required by applicable
4 law.

5
6 The Permit unlawfully fails to establish numeric water quality-based effluent limitations
7 and appropriate monitoring for discharges to all impaired waterbodies.

8 The Permit is defective in that it allows provides for compliance schedules that do not
9 satisfy requirements of applicable law.

10
11 The adaptive management requirements of the Permit ("Corrective Actions") are
12 inconsistent with applicable law. Among other deficiencies, relevant permit conditions regarding
13 triggering timelines for corrective actions make it extremely unlikely that any given permittee
14 will actually reach Level 3, the stage at which treatment BMPs are finally required. This is a
15 failure to require AKART and otherwise inconsistent with applicable law. In addition, the
16 requirements of a Level 3 response do not ensure that AKART is implemented even if Level 3 is
17 reached. The Corrective Action conditions also allow Ecology to waive permit requirements to
18 implement improved water quality controls even where discharges may cause or contribute to a
19 violation of water quality standards.

20
21
22 Conditions of the Permit concerning public access to information are unclear and
23 unlawful.


24
25 Various definitions and federally-required conditions included in the Permit are
26 inconsistent with applicable law.

1 7. Relief requested.

2 Appellant requests that the Board order the Department of Ecology to modify the
3 Industrial Stormwater General Permit to be consistent with applicable legal requirements in
4 response to the above-listed defects.

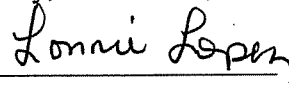
5 Dated this 19th day of November, 2009.

6
7 SMITH & LOWNEY, PLLC

8
9 By: 
10 Richard A. Smith, WSBA #21788
11 Brian Knutsen, WSBA #38806
12 Attorneys for Petitioner

13 CERTIFICATE OF SERVICE

14 I, Lonnie Lopez, declare that I had this Notice Of Appeal served by Overnight Mail on the
15 Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, on November 17, 2009.

16 
17 Lonnie Lopez

NOV 20 2009

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OFFICE OF DIRECTOR

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